

## § 121.101

- 121.602 At what point in time must a MED applicant be small?
- 121.603 How does SBA determine whether a Participant is small for a particular MED subcontract?
- 121.604 Are MED Participants considered small for purposes of other SBA assistance?

### SIZE ELIGIBILITY REQUIREMENTS FOR THE SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM

- 121.701 What SBIR programs are subject to size determinations?
- 121.702 What size standards are applicable to the SBIR program?
- 121.703 Are formal size determinations binding on parties?
- 121.704 When does SBA determine the size status of a business concern?
- 121.705 Must a business concern self-certify its size status?

### SIZE ELIGIBILITY REQUIREMENTS FOR PAYING REDUCED PATENT FEES

- 121.801 May patent fees be reduced if a concern is small?
- 121.802 What size standards are applicable to reduced patent fees programs?
- 121.803 Are formal size determinations binding on parties?
- 121.804 When does SBA determine the size status of a business concern?
- 121.805 May a business concern self-certify its size status?

### SIZE ELIGIBILITY REQUIREMENTS FOR COMPLIANCE WITH PROGRAMS OF OTHER AGENCIES

- 121.901 Can other Government agencies obtain SBA size determinations?
- 121.902 What size standards are applicable to programs of other agencies?
- 121.903 How may an agency use size standards for its programs that are different than those established by SBA?
- 121.904 When does SBA determine the size status of a business concern?

### PROCEDURES FOR SIZE PROTESTS AND REQUESTS FOR FORMAL SIZE DETERMINATIONS

- 121.1001 Who may initiate a size protest or a request for formal size determination?
- 121.1002 Who makes a formal size determination?
- 121.1003 Where should a size protest be filed?
- 121.1004 What time limits apply to size protests?
- 121.1005 How must a protest be filed with the contracting officer?
- 121.1006 When will a size protest be referred to an SBA Government Contracting Area Office?
- 121.1007 Must a protest of size status relate to a particular procurement and be specific?

## 13 CFR Ch. I (1–1–04 Edition)

- 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?
- 121.1009 What are the procedures for making the size determination?
- 121.1010 How does a concern become recertified as a small business?

### APPEALS OF SIZE DETERMINATIONS AND NAICS CODE DESIGNATIONS

- 121.1101 Are formal size determinations subject to appeal?
- 121.1102 Are NAICS code designations subject to appeal?
- 121.1103 What are the procedures for appealing an NAICS code designation?

### Subpart B—Other Applicable Provisions

#### WAIVERS OF THE NONMANUFACTURER RULE FOR CLASSES OF PRODUCTS AND INDIVIDUAL CONTRACTS

- 121.1201 What is the Nonmanufacturer Rule?
- 121.1202 When will a waiver of the Nonmanufacturer Rule be granted for a class of products?
- 121.1203 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?
- 121.1204 What are the procedures for requesting and granting waivers?
- 121.1205 How is a list of previously granted class waivers obtained?

AUTHORITY: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), and 644(c), and 662(5); and sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

SOURCE: 61 FR 3286, Jan. 31, 1996, unless otherwise noted.

### Subpart A—Size Eligibility Provisions and Standards

#### PROVISIONS OF GENERAL APPLICABILITY

#### § 121.101 What are SBA size standards?

(a) SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).

(b) NAICS is described in the *North American Industry Classification Manual—United States*, which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1(800) 553-6847 or 1(703) 605-6000; or via the

## Small Business Administration

## § 121.103

Internet at <http://www.ntis.gov/yellowbk/Inty205.htm>. The manual includes definitions for each industry, tables showing relationships between 1997 NAICS and 1987 SICs, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad sectors. Section 121.201 provides a full table of small business size standards matched to the U.S. NAICS industry codes. A full table matching a size standard with each NAICS Industry or U.S. Industry code is also published annually by SBA in the FEDERAL REGISTER.

[65 FR 30840, May 15, 2000, as amended at 67 FR 52602, Aug. 13, 2002]

### § 121.102 How does SBA establish size standards?

(a) SBA considers economic characteristics comprising the structure of an industry, including degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size. It also considers technological changes, competition from other industries, growth trends, historical activity within an industry, unique factors occurring in the industry which may distinguish small firms from other firms, and the objectives of its programs and the impact on those programs of different size standard levels.

(b) As part of its review of a size standard, SBA will investigate if any concern at or below a particular standard would be dominant in the industry. SBA will take into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence on a national basis in which a number of business concerns are engaged. Size standards seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.

(c) As part of its review of size standards, SBA's Office of Size Standards will examine the impact of inflation on monetary-based size standards (e.g., receipts, net income, assets) at least once every five years and submit a report to the Administrator or designee. If SBA finds that inflation has significantly eroded the value of the monetary-based

size standards, it will issue a proposed rule to increase size standards.

(d) Please address any requests to change existing size standards or establish new ones for emerging industries to the Assistant Administrator for Size Standards, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3045, Jan. 23, 2002]

### § 121.103 What is affiliation?

(a) *General Principles of Affiliation.* (1) Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

(2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

(3) Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, may be treated as one party with such interests aggregated.

(4) SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.

(b) *Exclusion from affiliation coverage.*

(1) Business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, are not considered affiliates of such investment companies or development companies.

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or